

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SERGIO ALVAREZ,

Plaintiff,

v.

MORRIS SHEA BRIDGE COMPANY,

Defendant.

Case No. 1:24-cv-00723-JLT-BAM

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED WITH
PREJUDICE**

FOURTEEN (14) DAY DEADLINE

Plaintiff Sergio Alvarez filed his First Amended Complaint against Defendant Morris-Shea Bridge Company, Inc. on August 29, 2024. (Doc. 20.) On September 13, 2024, Defendant filed a motion to dismiss Plaintiff's First Amended Complaint under Federal Rule of Civil Procedure 12(b)(6). (Doc. 22.) The motion was referred to the undersigned for the preparation of findings and recommendations. (Doc. 26.) On October 7, 2024, the Court vacated the motion hearing, instructed the parties that Local Rule 230 would govern the filing of oppositions and replies, and informed the parties that the motion would be decided on the papers. (Doc. 27.)

On October 11, 2024, the Court instructed Defendant to file proof of service of the motion to dismiss on Plaintiff. (Doc. 31.) On October 14, 2024, Defendant filed a certificate/proof of service that indicated Plaintiff had been served with the motion to dismiss by U.S. Mail on October 14, 2024. (Doc. 32.)

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1 Local Rule 230(c) requires that opposition, if any, to the granting of the motion be filed
2 and served no later than fourteen (14) days after the motion was filed. L.R. 230(c). Local Rule
3 230(c) provides that the “failure to file a timely opposition may also be construed by the Court as
4 a non-opposition to the motion.” L.R. 230(c). Although the motion was filed on September 13,
5 2024, Plaintiff was not served with the motion until October 14, 2024. (Doc. 32.) In
6 consideration of the date of service, Plaintiff’s opposition or non-opposition to the motion to
7 dismiss was due no later than October 31, 2024. No opposition has been filed.

8 Accordingly, it is HEREBY ORDERED that Plaintiff shall show cause by WRITTEN
9 RESPONSE **within fourteen (14) days of service of this order** why the motion to dismiss
10 should not be granted and the action dismissed with prejudice based on Plaintiff’s failure to file a
11 timely opposition. Plaintiff may comply with the Court’s order by filing an opposition or
12 statement of non-opposition to Defendant’s September 13, 2024 motion to dismiss.
13 Alternatively, Plaintiff may file a notice of voluntary dismissal pursuant to Federal Rule of Civil
14 Procedure 41(a)(1). Plaintiff is warned that failure to comply with the Court’s order will result in
15 dismissal of this action with prejudice.

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17 IT IS SO ORDERED.

18 Dated: November 8, 2024

/s/ Barbara A. McAuliffe
19 UNITED STATES MAGISTRATE JUDGE
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